

**IN THE UNITED STATES OF AMERICA
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:08CV205-P-A

\$49,400.00 IN U.S. CURRENCY

DEFENDANT

ORDER

This cause is before the Court on the plaintiff's Motion to Strike [8]. The Court, having reviewed the motion, the response, the briefs of the parties, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

The plaintiff's motion is based on the failure of the claimant, Mikia Smith, to file a verified claim as mandated by Rule G(5) of the Supplemental Rules for Certain Admiralty and Maritime Cases.^{1 2} The Fifth Circuit requires strict compliance with respect to the filing of claims and answers in forfeiture suits. United States v. Real Property, 123 F.3d 312, 313 (5th Cir. 1997). Filing of an answer prior to the filing of a verified claim is not in accordance with the requirements of Supplemental Rule G(5). Furthermore, the Fifth Circuit has held that the filing of a claim is a prerequisite to the right to file an answer and to defend on the merits. Id.

In response to the pending motion, claimant merely points to her filing of a claim in conjunction with the administrative forfeiture proceeding. However, a claim filed in an

¹ The deadline for filing a verified claim has lapsed.

² Although plaintiff filed no verified claim, she did file an Answer to the forfeiture complaint on December 11, 2008.

administrative proceeding is no substitute for filing a verified claim in a judicial forfeiture action because the two proceedings are distinct. United States v. \$48,000 in U.S. Currency, 2007 WL 1467158. * 3 (E.D. La. 2007). Moreover, claimant has presented no mitigating circumstances which would warrant excusing her failure (or that of counsel) to comply with the requirements of Supplemental Rule G(5). Accordingly,

IT IS, THEREFORE, ORDERED AND ADJUDGED that the plaintiff's Motion to Strike [8] is well-taken and should be, and hereby is, GRANTED.

SO ORDERED, this the 20th day of August, 2009.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE